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7
8 **BEFORE THE**
BOARD OF REGISTERED NURSING
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. **2010-511**

11 **FARIDEH NARAGHI**
12 **55 Carr Drive**
13 **Moraga, CA 94556**

A C C U S A T I O N

14 **Registered Nurse License No. 240825**

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

19 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
20 official capacity as the Interim Executive Officer of the Board of Registered Nursing, Department
21 of Consumer Affairs.

22 2. On or about February 28, 1974, the Board of Registered Nursing issued Registered
23 Nurse License Number 240825 to Farideh Naraghi (Respondent). The Registered Nurse License
24 expired on November 30, 2005 and was not renewed until July 10, 2008. The license was in full
25 force and effect thereafter until November 30, 2009, when the license again expired.

26 **JURISDICTION**

27 3. This Accusation is brought before the Board of Registered Nursing (Board),
28 Department of Consumer Affairs, under the authority of the following laws. All section

1 references are to the Business and Professions Code unless otherwise indicated.

2 4. Section 2750 of the Business and Professions Code (Code) provides, in pertinent part,
3 that the Board may discipline any licensee, including a licensee holding a temporary or an
4 inactive license, for any reason provided in Article 3 (commencing with section 2750) of the
5 Nursing Practice Act.

6 5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license
7 shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the
8 licensee or to render a decision imposing discipline on the license. Under section 2811(b) of the
9 Code, the Board may renew an expired license at any time within eight years after the expiration.

10 STATUTORY AND REGULATORY PROVISIONS

11 6. Section 651 of the Code states, in pertinent part:

12 (a) It is unlawful for any person licensed under this division or under any initiative act
13 referred to in this division to disseminate or cause to be disseminated any form of public
14 communication containing a false, fraudulent, misleading, or deceptive statement, claim, or image
15 for the purpose of or likely to induce, directly or indirectly, the rendering of professional services
16 or furnishing of products in connection with the professional practice or business for which he or
17 she is licensed. A "public communication" as used in this section includes, but is not limited to,
18 communication by means of mail, television, radio, motion picture, newspaper, book, list or
19 directory of healing arts practitioners, Internet, or other electronic communication.

20 (b) A false, fraudulent, misleading, or deceptive statement, claim, or image includes a
21 statement or claim that does any of the following:

22 (1) Contains a misrepresentation of fact.

23 (2) Is likely to mislead or deceive because of a failure to disclose material facts.

24 (3)(A) Is intended or is likely to create false or unjustified expectations of favorable results,
25 including the use of any photograph or other image that does not accurately depict the results of
26 the procedure being advertised or that has been altered in any manner from the image of the
27 actual subject depicted in the photograph or image.

1 (5) Contains other representations or implications that in reasonable probability will cause
2 an ordinarily prudent person to misunderstand or be deceived.

3 ...

4 (8) Includes any statement, endorsement, or testimonial that is likely to mislead or deceive
5 because of a failure to disclose material facts.

6 ...

7 (g) Any violation of this section by a person so licensed shall constitute good cause for
8 revocation or suspension of his or her license or other disciplinary action.

9 ...

10 7. Section 652 of the Code states:

11 Violation of this article in the case of a licensed person constitutes unprofessional conduct
12 and grounds for suspension or revocation of his or her license by the board by whom he or she is
13 licensed, or if a license has been issued in connection with a place of business, then for the
14 suspension or revocation of the place of business in connection with which the violation occurs.
15 The proceedings for suspension or revocation shall be conducted in accordance with Chapter 5
16 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and
17 each board shall have all the powers granted therein. However, in the case of a licensee of the
18 State Department of Health Services, the proceedings shall be conducted in accordance with
19 Section 110171 of the Health and Safety Code. In addition, any violation constitutes a
20 misdemeanor as to any and all persons offering, delivering, receiving, accepting, or participating
21 in any rebate, refund, commission, preference, patronage dividend, unearned discount, or
22 consideration, whether or not licensed under this division, and is punishable by imprisonment in
23 the county jail not exceeding six months, by a fine not exceeding two thousand five hundred
24 dollars (\$2,500), or by both the imprisonment and fine.

25 8. Section 2052 of the Code states:

26 (a) Notwithstanding Section 146, any person who practices or attempts to practice, or who
27 advertises or holds himself or herself out as practicing, any system or mode of treating the sick or
28 afflicted in this state, or who diagnoses, treats, operates for, or prescribes for any ailment,

1 blemish, deformity, disease, disfigurement, disorder, injury, or other physical or mental condition,
2 of any person, without having at the time of so doing a valid, unrevoked, or unsuspended
3 certificate [to practice medicine] or without being authorized to perform the act pursuant to a
4 certificate obtained in accordance with some other provision of law is guilty of a public offense,
5 punishable by a fine not exceeding ten thousand dollars (\$10,000), by imprisonment in the state
6 prison, by imprisonment in a county jail not exceeding one year, or by both the fine and either
7 imprisonment.

8 (b) Any person who conspires with or aids or abets another to commit any act described in
9 subdivision (a) is guilty of a public offense, subject to the punishment described in that
10 subdivision.

11 (c) The remedy provided in this section shall not preclude any other remedy provided by
12 law.

13 9. Section 2725 of the Code states:

14 (a) In amending this section at the 1973-74 session, the Legislature recognizes that nursing
15 is a dynamic field, the practice of which is continually evolving to include more sophisticated
16 patient care activities. It is the intent of the Legislature in amending this section at the 1973-74
17 session to provide clear legal authority for functions and procedures that have common
18 acceptance and usage. It is the legislative intent also to recognize the existence of overlapping
19 functions between physicians and registered nurses and to permit additional sharing of functions
20 within organized health care systems that provide for collaboration between physicians and
21 registered nurses. These organized health care systems include, but are not limited to, health
22 facilities licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the
23 Health and Safety Code, clinics, home health agencies, physicians' offices, and public or
24 community health services.

25 (b) The practice of nursing within the meaning of this chapter [the Nursing Practice Act]
26 means those functions, including basic health care, that help people cope with difficulties in daily
27 living that are associated with their actual or potential health or illness problems or the treatment
28 thereof, and that require a substantial amount of scientific knowledge or technical skill, including

1 all of the following:

2 (1) Direct and indirect patient care services that ensure the safety, comfort, personal
3 hygiene, and protection of patients; and the performance of disease prevention and restorative
4 measures.

5 (2) Direct and indirect patient care services, including, but not limited to, the
6 administration of medications and therapeutic agents, necessary to implement a treatment, disease
7 prevention, or rehabilitative regimen ordered by and within the scope of licensure of a physician,
8 dentist, podiatrist, or clinical psychologist, as defined by Section 1316.5 of the Health and Safety
9 Code.

10 (3) The performance of skin tests, immunization techniques, and the withdrawal of human
11 blood from veins and arteries.

12 (4) Observation of signs and symptoms of illness, reactions to treatment, general behavior,
13 or general physical condition, and (A) determination of whether the signs, symptoms, reactions,
14 behavior, or general appearance exhibit abnormal characteristics, and (B) implementation, based
15 on observed abnormalities, of appropriate reporting, or referral, or standardized procedures, or
16 changes in treatment regimen in accordance with standardized procedures, or the initiation of
17 emergency procedures.

18 (c) 'Standardized procedures,' as used in this section, means either of the following:

19 (1) Policies and protocols developed by a health facility licensed pursuant to Chapter 2
20 (commencing with Section 1250) of Division 2 of the Health and Safety Code through
21 collaboration among administrators and health professionals including physicians and nurses.

22 (2) Policies and protocols developed through collaboration among administrators and
23 health professionals, including physicians and nurses, by an organized health care system which
24 is not a health facility licensed pursuant to Chapter 2 (commencing with Section 1250) of
25 Division 2 of the Health and Safety Code.

26 The policies and protocols shall be subject to any guidelines for standardized procedures
27 that the Division of Licensing of the Medical Board of California and the Board of Registered
28

1 Nursing may jointly promulgate. If promulgated, the guidelines shall be administered by the
2 Board of Registered Nursing.

3 (d) Nothing in this section shall be construed to require approval of standardized
4 procedures by the Division of Licensing of the Medical Board of California, or by the Board of
5 Registered Nursing.

6 (e) No state agency other than the board may define or interpret the practice of nursing for
7 those licensed pursuant to the provisions of the chapter, or develop standardized procedures or
8 protocols pursuant to this chapter, unless so authorized by this chapter, or specifically required
9 under state or federal statute. "State agency" includes every state office, officer, department,
10 division, bureau, board, authority, and commission.

11 10. Section 2732 of the Code states:

12 No person shall engage in the practice of nursing, as defined in Section 2725, without
13 holding a license which is in an active status issued under this chapter except as otherwise
14 provided in this act.

15 Every licensee may be known as a registered nurse and may place the letters "R.N." after
16 his name.

17 11. Section 2761 of the Code states, in pertinent part:

18 The board may take disciplinary action against a certified or licensed nurse or deny an
19 application for a certificate or license for any of the following:

20 (a) Unprofessional conduct, which includes, but is not limited to, the following:

21 (1) Incompetence, or gross negligence in carrying out usual certified or licensed nursing
22 functions.

23 ...
24 (3) The use of advertising relating to nursing which violates Section 17500.

25 ...
26 (d) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
27 violating of, or conspiring to violate any provision or term of this chapter [the Nursing Practice
28 Act] or regulations adopted pursuant to it.

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12. Section 2795 of the Code states:

Except as provided in this chapter, it is unlawful for any person to do any of the following:

(a) To practice or to offer to practice nursing in this state unless the person holds a license in an active status .

(b) To use any title, sign, card, or device to indicate that he or she is qualified to practice or is practicing nursing, unless the person has been duly licensed or certified under this chapter.

13. Section 2796 of the Code states:

It is unlawful for any person or persons not licensed or certified as provided in this chapter to use the title "registered nurse," the letters "R.N.," or the words "graduate nurse," "trained nurse," or "nurse anesthetist."

It is unlawful for any person or persons not licensed or certified as provided in this chapter to impersonate a professional nurse or pretend to be licensed to practice professional nursing as provided in this chapter.

14. Section 3660 of the Code states;

Except as provided in subdivision (h) of Section 3644, a person shall have a valid, unrevoked, or unsuspended license issued under [the Naturopathic Doctors Act] to do any of the following:

(a) To claim to be a naturopathic doctor, licensed naturopathic doctor, doctor of naturopathic medicine, doctor of naturopathy, or naturopathic medical doctor.

(b) To use the professional abbreviation "N.D." or other titles, words, letters, or symbols with the intent to represent that he or she practices, is authorized to practice, or is able to practice naturopathic medicine as a naturopathic doctor.

15. Section 16240 of the Code states:

Every person who practices, offers to practice, or advertises any business, trade, profession, occupation, or calling, or who uses any title, sign, initials, card, or device to indicate that he or she is qualified to practice any business, trade, profession, occupation, or calling for which a license, registration, or certificate is required by any law of this state, without holding a current

1 and valid license, registration, or certificate as prescribed by law, is guilty of a misdemeanor.

2 16. Section 17500 of the Code states:

3 It is unlawful for any person, firm, corporation or association, or any employee thereof with
4 intent directly or indirectly to dispose of real or personal property or to perform services,
5 professional or otherwise, or anything of any nature whatsoever or to induce the public to enter
6 into any obligation relating thereto, to make or disseminate or cause to be made or disseminated
7 before the public in this state, or to make or disseminate or cause to be made or disseminated
8 from this state before the public in any state, in any newspaper or other publication, or any
9 advertising device, or by public outcry or proclamation, or in any other manner or means
10 whatever, including over the Internet, any statement, concerning that real or personal property or
11 those services, professional or otherwise, or concerning any circumstance or matter of fact
12 connected with the proposed performance or disposition thereof, which is untrue or misleading,
13 and which is known, or which by the exercise of reasonable care should be known, to be untrue or
14 misleading, or for any person, firm, or corporation to so make or disseminate or cause to be so
15 made or disseminated any such statement as part of a plan or scheme with the intent not to sell
16 that personal property or those services, professional or otherwise, so advertised at the price
17 stated therein, or as so advertised. Any violation of the provisions of this section is a
18 misdemeanor punishable by imprisonment in the county jail not exceeding six months, or by a
19 fine not exceeding two thousand five hundred dollars (\$2,500), or by both that imprisonment and
20 fine.

21 17. California Code of Regulations, title 16, section 1444, states:

22 A conviction or act shall be considered to be substantially related to the qualifications,
23 functions or duties of a registered nurse if to a substantial degree it evidences the present or
24 potential unfitness of a registered nurse to practice in a manner consistent with the public health,
25 safety, or welfare. Such convictions or acts shall include but not be limited to the following:

26 (a) Assaultive or abusive conduct including, but not limited to, those violations listed in
27 subdivision (d) of Penal Code Section 11160.

28 (b) Failure to comply with any mandatory reporting requirements.

1 (c) Theft, dishonesty, fraud, or deceit.

2 (d) Any conviction or act subject to an order of registration pursuant to Section 290 of the
3 Penal Code.

4 **COST RECOVERY**

5 18. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
6 administrative law judge to direct a licensee found to have committed a violation or violations of
7 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
8 enforcement of the case.

9 **FACTUAL SUMMARY**

10 19. On or about May, 2008, in Moraga, California, Respondent owned and operated a
11 business called Whole Life Healing Resources (hereinafter "Whole Life").

12 20. On or about May, 20, 2008, during a telephone conversation, Respondent identified
13 herself to Emily Barboza, an investigator for the Division of Investigation, Department of
14 Consumer Affairs, as a doctor of naturopathic medicine. At the time, Investigator Barboza was
15 posing as a potential customer of Whole Life.

16 21. On or about May 28, 2008, Investigators Barboza and Rowe attended a seminar at
17 Respondent's home in Moraga, California. The subject of the seminar was Respondent's use of a
18 Bemer 3000 device for treatment on patients. During this seminar, Respondent identified herself
19 as a Registered Nurse and a Doctor of Naturopathic Medicine. Respondent distributed pamphlets
20 which identified Respondent as follows: "Farideh F. Naraghi, NHD, RN, MA." Respondent also
21 distributed business cards that identified her in this manner or similar to this manner. The
22 business cards listed various services offered by Whole Life including:

23 a. Live and dry blood analysis.

24 b. Live food therapy.

25 c. Biofeedback therapy.

26 d. Iridology.

27 e. Colon therapy.

28 f. Herbology.

- g. Aromatherapy.
- h. Acupressure and lymphatic massage.
- i. Computerized regulatory thermography.
- j. Darkfield microscopy.
- k. Biological terrain assessment.
- l. Lymphatic drainage.
- m. Detoxification programs.

22. On or about June 30, 2008, investigator Barboza spoke with Respondent by telephone and made an appointment for treatment services on July 1, 2008.

23. On or about July 1, 2008, Investigator Barboza, posing as a patient, went to Respondent's home in Moraga, California. Respondent proposed using a Scio machine in order to diagnose physical problems in Investigator Barboza's body. Respondent observed, on Respondent's wall, certificates showing Respondent to be a Doctor of Naturopathy and a Registered Nurse.

24. Investigator Barboza then revealed her true identity and asked Respondent to discuss her practice. Respondent admitted to Investigator Barboza that her Registered Nurse license had been on "inactive" status since 2005. Respondent admitted that her duties at Whole Life included "health counseling," and that such work required an active and current registered nursing license.

25. Respondent was not licensed as a naturopathic doctor.

FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

26. Respondent is subject to disciplinary action under section 2761(a) of the Code in that she acted unprofessionally, as set forth above in paragraphs 19-25.

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct -- Unlawful Representation Regarding Naturopathic Medicine)

27. Respondent is subject to disciplinary action under sections 3660 and 2761(a) of the Code in that she acted unprofessionally by claiming to be a naturopathic doctor, licensed naturopathic doctor, doctor of naturopathic medicine, doctor of naturopathy, or naturopathic

1 medical doctor, and used titles, words, letters, or symbols with the intent to represent that she
2 practiced, was authorized to practice, or was able to practice naturopathic medicine as a
3 naturopathic doctor, when she was not licensed to do so, as set forth above in paragraphs 19-25.

4 **THIRD CAUSE FOR DISCIPLINE**

5 (Unprofessional Conduct -- Unlawful Practice of Medicine)

6 28. Respondent is subject to disciplinary action under sections 2052 and 2761(a) of the
7 Code in that she acted unprofessionally by engaging or offering to engage in the unlicensed
8 practice of medicine, as set forth above in paragraphs 19-25.

9 **FOURTH CAUSE FOR DISCIPLINE**

10 (Unprofessional Conduct -- Unlawful Representation as Licensed Registered Nurse)

11 29. Respondent is subject to disciplinary action under Code sections 2732, 2761(d), 2795,
12 2796 and 16240 in that she engaged in the practice of nursing, offered to engage in the practice of
13 nursing, and represented herself by sign, card, title or device to be qualified to practice as a
14 registered nurse, when she was not licensed to do so, as set forth above in paragraphs 19-25.

15 **FIFTH CAUSE FOR DISCIPLINE**

16 (Unfair Business Practices)

17 30. Respondent is subject to disciplinary action under sections 651, 652, 2761(a)(3),
18 16240 and 17500 of the Code in that she acted unprofessionally by engaging in advertising and
19 statements relating to her practice of nursing which are false, misleading and deceptive, as set
20 forth above in paragraphs 19-25.

21 **PRAYER**

22 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
23 and that following the hearing, the Board of Registered Nursing issue a decision:

24 1. Revoking or suspending Registered Nurse License Number 240825, issued to Farideh
25 Naraghi;

26 2. Ordering Farideh Naraghi to pay the Board of Registered Nursing the reasonable
27 costs of the investigation and enforcement of this case, pursuant to Business and Professions
28 Code section 125.3;

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3. Taking such other and further action as deemed necessary and proper.

DATED: 4/15/10

Louise R. Bailey
LOUISE R. BAILEY, M.ED., RN
Interim Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant